



California Regulatory Notice Register

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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**PROPOSED ACTION ON
REGULATIONS**

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**TITLE 2. FAIR POLITICAL
PRACTICES COMMISSION**

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Sections 82011, 87303, and 87304 of the Government Code to review proposed conflict of interest codes, will review the proposed/amended conflict of interest codes of the following:

CONFLICT OF INTEREST CODE

AMENDMENT

STATE AGENCY: Board of Pilot Commissioners

A written comment period has been established commencing on **July 9, 2010** and closing on **August 23, 2010**. Written comments should be directed to the Fair Political Practices Commission, Attention Alexandra Castillo, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed conflict of interest code(s) will be submitted to the Commission's Executive Director for his review, unless any interested person or his or her duly authorized representative requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed code(s) will be submitted to the Commission for review.

The Executive Director of the Commission will review the above-referenced conflict of interest code(s), proposed pursuant to Government Code Section 87300, which designate, pursuant to Government Code Section 87302, employees who must disclose certain investments, interests in real property and income.

The Executive Director of the Commission, upon his or its own motion or at the request of any interested person, will approve, or revise and approve, or return the proposed code(s) to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments or comments, in writing to the Executive Director of the Commission, relative to review of the pro-

posed conflict of interest code(s). Any written comments must be received no later than **August 23, 2010**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code Section 17514.

**EFFECT ON HOUSING COSTS
AND BUSINESSES**

Compliance with the codes has no potential effect on housing costs or on private persons, businesses or small businesses.

AUTHORITY

Government Code Sections 82011, 87303 and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict of interest code shall approve code as submitted, revise the proposed code and approve it as revised, or return the proposed code for revision and re-submission.

REFERENCE

Government Code Sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict of interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

CONTACT

Any inquiries concerning the proposed conflict of interest code(s) should be made to Alexandra Castillo, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

**AVAILABILITY OF PROPOSED CONFLICT
OF INTEREST CODES**

Copies of the proposed conflict of interest codes may be obtained from the Commission offices or the respective agency. Requests for copies from the Commission

should be made to Alexandra Castillo, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

The Department of Food and Agriculture adopted 3437 of the regulations in Title 3 of the California Code of Regulations pertaining to European Grapevine Moth Interior (EGVM) Quarantine as an emergency action that was effective on March 3, 2010. The Department proposes to continue the regulation as amended and to complete the amendment process by submission of a Certificate of Compliance no later than August 30, 2010.

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period. Following the public hearing if one is requested, or following the written comment period if no public hearing is requested, the Department of Food and Agriculture, at its own motion, or at the instance of any interested person, may adopt the proposal substantially as set forth without further notice.

Notice is also given that any person interested may present statements or arguments in writing relevant to the action proposed to the agency officer named below on or before August 23, 2010.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law provides that the Secretary is obligated to investigate the existence of any pest that is not generally distributed within this State and determine the probability of its spread, and the feasibility of its control or eradication (Food and Agricultural Code (FAC) Section 5321).

Existing law also provides that the Secretary may establish, maintain and enforce quarantine, eradication and other such regulations as he deems necessary to protect the agricultural industry from the introduction and spread of pests (FAC Sections 401, 403, 407 and 5322). Existing law also provides that eradication regulations may proclaim any portion of the State as an eradication area and set forth the boundaries, the pest, its hosts and the methods to be used to eradicate the pest (FAC Section 5761).

The adoption of Section 3437 established the pest, regulated area, hosts and commodities, restrictions and exemptions regarding the movement of the hosts and

commodities. The effect of the adoption of this regulation was to provide authority for the State to perform quarantine activities against EGVM within the regulated areas of Napa, Solano and Sonoma counties.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The Department of Food and Agriculture has determined that Section 3437 does not impose a mandate on local agencies or school districts, except that an agricultural commissioner of a county under quarantine has a duty to enforce Section 3437. No reimbursement is required for Section 3437 under Section 17561 of the Government Code because both of the affected county agricultural commissioners requested the change in the regulation.

The Department also has determined that the amended regulation will involve no additional costs or savings to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State.

EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed actions will not affect housing costs.

EFFECT ON BUSINESSES

The Department has made an initial determination that the proposed actions will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The estimated cost impact of the adopted regulation on a representative private person or business is not expected to be significantly adverse. A representative business could incur costs of approximately \$881.

ASSESSMENT

The Department has made an assessment that the proposed amendment to the regulation would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

ALTERNATIVES CONSIDERED

The Department of Food and Agriculture must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AUTHORITY

The Department adopted Section 3437 pursuant to the authority vested by Sections 407, 5301, 5302 and 5322 of the Food and Agricultural Code of California.

REFERENCE

The Department adopted Section 3437 to implement, interpret and make specific Sections 5301, 5302 and 5322, Food and Agricultural Code.

EFFECT ON SMALL BUSINESS

The amendment of this regulation may affect small businesses.

CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed action, location of the rulemaking file, request for a public hearing, and final statement of reasons may be directed is: Susan McCarthy, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room 210, Sacramento, California 95814, 916.654.1017, FAX 916.654.1018, e-mail: smccarthy@cdfa.ca.gov. In her absence, you may contact Stephen Brown at 916.654.1017. Questions regarding the substance of the proposed regulations should be directed to Susan McCarthy.

INTERNET ACCESS

The Department has posted the information regarding this proposed regulatory action on its Internet website (www.cdfa.ca.gov/cdfa/pendingregs).

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department of Food and Agriculture has prepared an initial statement of reasons for the proposed action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the initial statement of

reasons and the proposed regulations in underline and strikeout form may be obtained upon request. The location of the information on which the proposal is based may also be obtained upon request. In addition, the final statement of reasons is available upon request. Requests should be directed to the contact named herein.

If the regulations adopted by the Department differ from, but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of the regulations prior to the date of adoption by contacting the agency officer (contact) named herein.

TITLE 5. BUREAU FOR PRIVATE POSTSECONDARY EDUCATION

DEPARTMENT OF CONSUMER AFFAIRS

NOTICE IS HEREBY GIVEN that the Bureau for Private Postsecondary Education (hereinafter "Bureau"), Department of Consumer Affairs, is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Department of Consumer Affairs hearing room, 1625 North Market Blvd, Sacramento, California, 95815, at 10:15 a.m., or as soon as practicable thereafter, on August 23, 2010. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Bureau at its office not later than 5:00 p.m. on August 23, 2010, or must be received by the Bureau at the hearing. The Bureau, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 94803, 94855, 94877, 94932, 94935, and 94937 of the Education Code, and to implement, interpret or make specific Sections 118, 480, 481, and 482 of the Business and Professions Code; Sections 94885, 94887, 94933, 94933.5, 94935, 94936, 94937, and 94940 of the Education Code; and Section 11425.50(e) of the Government Code, the Bureau is considering changes to Division 7.5 of Title 5 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW

AB 48, Chapter 310, Statutes of 2009, requires the newly reconstituted Bureau for Private Postsecondary Education (“Bureau” or “BPPE”), within the Department of Consumer Affairs, to adopt regulations in order to establish a voluntary informal appeal process for institutions receiving a notice to comply, and regulations governing placing an institution on probation, or suspending or revoking an approval to operate.

Government Code Section 11425.50(e) provides that a penalty in any administrative disciplinary action may not be based on a guideline unless it has been adopted as a regulation in accordance with the Administrative Procedure Act.

The Bureau is proposing to make the following changes:

1. Amend title of Chapter 5.

This proposal would amend the title of Chapter 5 to read: Enforcement and Discipline.

2. Add Article 1 Titled: Notices to Comply commencing with section 75010.

3. Adopt Section 75010.

The proposed regulations would specify that the Bureau staff may issue a notice to comply to an institution for minor violations of the Act or Chapter 5.

4. Add Article 3 Titled: Standards Related to Denial, Discipline, and Reinstatement of Approvals to Operate commencing with section 75060 (Article 2 reserved for Citation and Fine)

5. Renumber the following sections:

<u>Existing Section</u>	<u>New Section</u>
74120	75060
74130	75070
74160	75080
74170	75090

6. Adopt Section 75100.

The proposed regulations would specify that the Bureau may suspend, revoke or place on probation an institution’s approval to operate.

7. Adopt Section 75500.

The proposed regulations would adopt the Bureau’s Disciplinary Guidelines (August 2010), which are incorporated by reference.

8. Add new chapter title, Chapter 6, entitled “Student Tuition Recovery Fund” commencing with section 76000.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500–17630 Require Reimbursement: None

Business Impact:

The Bureau has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses:

The Bureau has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business:

Institutional costs for appealing a notice to comply could be reduced by a significant amount of money when using an informal appeal process as opposed to a formal process under the Administrative Procedure Act.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Bureau has determined that the proposed regulations would affect small businesses.

CONSIDERATION OF ALTERNATIVES

The Bureau must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS
AND INFORMATION

The Bureau has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Bureau for Private Postsecondary Education,

1625 N. Market Blvd., Suite S 202, Sacramento, California 95834.

AVAILABILITY AND LOCATION OF THE
FINAL STATEMENT OF REASONS AND
RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below [or by accessing the website listed below].

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Joanne Wenzel
Staff Services Manager III
Address: 1625 N. Market Blvd., Suite S 202
Sacramento, California 95834
Telephone No.: (916) 574-7784
Fax No.: (916) 574-8652
E-Mail Address: Joanne.Wenzel@dca.ca.gov

The backup contact person is:

Name: Diane McKernon
Address: 1625 N. Market Blvd., Suite S 202
Sacramento, California 95834
Telephone No.: (916) 574-7792
Fax No.: (916) 574-8652
E-Mail Address: Diane.McKernon@dca.ca.gov

Website Access <http://bppe.ca.gov>: Materials regarding this proposal can be found at <http://bppe.ca.gov/>.

**TITLE 14. BOARD OF FORESTRY
AND FIRE PROTECTION**

Title 14 of the California Code of Regulations

[Published July 9, 2010]

NOTICE OF PROPOSED RULEMAKING

**Operations on Saturated Soils and Stable
Operating Surfaces, 2010**

The Board of Forestry and Fire Protection (Board) proposes to adopt the regulations of Title 14 of the California Code of Regulations (14 CCR) described below

after considering all comments, objections, and recommendations regarding the proposed action.

Amend:

14 CCR § 895.1 Definitions.

14 CCR § 914.7 [934.7, 954.7]. Timber Operations, Winter Period.

14 CCR § 915.1 [935.1, 955.1]. Use of Heavy Equipment for Site Preparation.

14 CCR § 916.9(k) [936.9(k), 956.9(k)]. Year-Round Logging Road, Landing and Tractor Road Use Limitations.

14 CCR § 916.9(l) [936.9(l), 956.9(l)]. Extended Wet Weather Period.

14 CCR § 923.1 [943.1, 963.1]. Planning for Roads and Landings.

14 CCR § 923.2 [943.2, 963.2]. Road Construction.

14 CCR § 923.5 [943.5, 963.5]. Landing Construction.

14 CCR § 1093.2. Contents of Road Management Plan.

14 CCR § 1104.1. Conversion Exemptions.

PUBLIC HEARING

The Board will hold a public hearing starting at 8:00 a.m., on Wednesday, September 8, 2010, at the Resources Building Auditorium, 1st Floor, 1416 Ninth Street, Sacramento, California. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the *Informative Digest*. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. Additionally, pursuant to Government Code Section 11125.1, any information presented to the Board during the open hearing in connection with a matter subject to discussion or consideration becomes part of the public record. Such information shall be retained by the Board and shall be made available upon request.

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. **The written comment period ends at 5:00 p.m., on Monday, August 23, 2010.** The Board will consider only written comments received at the Board office by that time (in addition to those written comments received at the public hearing). The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection
Attn: Christopher Zimny
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244–2460

Written comments can also be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection
Room 1506–14
1416 9th Street
Sacramento, CA

Written comments may also be sent to the Board via facsimile at the following phone number:

(916) 653–0989

Written comments may also be delivered via e-mail at the following address:

board.public.comments@fire.ca.gov

AUTHORITY AND REFERENCE

Public Resources Code (PRC) Sections 4551 and 4554.5 authorize the Board to adopt such rules and regulations as it determines are reasonably necessary to enable it to implement, interpret or make specific Sections 4512, 4513 and 4561 of the Public Resources Code. Reference: Public Resources Code sections 4513, 4551.5, 4561, 4584 and 21080.5.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The proposed rule amends sections in the California Forest Practice Rules which use the terms “saturated soil conditions” and “stable operation surface”. The amendments effectively qualify these terms to allow operations on saturated soils and maintenance of a stable operating surface to the extent that operations do “not violate Water Quality Requirements” and avoid any potential discharge “that may” result in increasing turbidity to watercourses. The amendments correct an unintended defect in the FPRs adopted in 2009 under the Anadromous Salmonid Protection Rules that prohibited any operations on saturated soil conditions or on [un]stable operating surfaces.

SPECIFIC PURPOSE OF THE REGULATION

The proposed amendments are designed to incorporate consistent, standard terminology for operations on saturated soils or stable operating surfaces. For subsec-

tions containing language for saturated soil conditions, each amendment incorporates language that essentially limits timber operations to situations where operations “shall not be conducted on saturated soils conditions that may produce sediment in quantities sufficient to cause a visible increase in turbidity of downstream waters in receiving Class I, II, III or IV waters or that violate Water Quality Requirements”. Similarly for subsection with language addressing stable operating surfaces, each amendment incorporates language that allows operations “that maintain a stable road surface that does not produce sediment in quantities that may cause a visible increase in turbidity of downstream waters in receiving Class I, II, III or IV waters or would violate Water Quality Requirements”.

These amendments result in operations, such as tractor yarding during winter period, site preparation, hauling, or road construction etc., being prohibited when operations “may produce” turbid discharge of water, and when operations would violate Water Quality Requirements.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has determined the proposed action will have the following effects:

- Mandate on local agencies and school districts: None
- Costs or savings to any State agency: The regulation will not result in a fiscal impact to the State.
- Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code (GC) sections commencing with GC Section 17500: None
- Other non-discretionary cost or savings imposed upon local agencies: None
- Cost or savings in federal funding to the State: None
- The Board has made an initial determination that there will be no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- Cost impacts on representative private person or businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Significant effect on housing costs: None
- Adoption of these regulations will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within

California; or (3) affect the expansion of businesses currently doing business within California.

- Effect on small business: The Board has determined that the proposed amendments will not have an adverse affect on small business. The proposed regulations provide greater flexibility to those harvesting timber by allowing operations on saturated soil conditions when such operations will not result in certain conditions that have a significant adverse environment impact or violate water quality requirements.
- The proposed rules do not conflict with, or duplicate Federal regulations.

BUSINESS REPORTING REQUIREMENT

The regulation does not require a report, which shall apply to businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the Board must determine that no reasonable alternative it considers or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

CONTACT PERSON

Requests for copies of the proposed text of the regulations, the *Initial Statement of Reasons*, modified text of the regulations and any questions regarding the substance of the proposed action may be directed to:

Board of Forestry and Fire Protection
Attn: Christopher Zimny
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460
Telephone: (916) 653-9418

The designated backup person in the event Mr. Zimny is not available is George Gentry, Executive Officer of the State Board of Forestry and Fire Protection, at the above address and phone (916) 653-8007.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared an *Initial Statement of Reasons* providing an explanation of the purpose, background, and justification for the proposed regulations.

The statement is available from the contact person on request.

When the *Final Statement of Reasons* has been prepared, the statement will be available from the contact person on request.

A copy of the express terms of the proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion, is also available from the contact person named in this notice.

The Board will have the entire rulemaking file, including all information considered as a basis for this proposed regulation, available for public inspection and copying throughout the rulemaking process at its office at the above address. All of the above referenced information is also available on the CDF web site at:

http://www.fire.ca.gov/BOF/board/board_proposed_rule_packages.html

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text—with the changes clearly indicated—available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who:

- a) testified at the hearings,
- b) submitted comments during the public comment period, including written and oral comments received at the public hearing, or
- c) requested notification of the availability of such changes from the Board of Forestry and Fire Protection.

Requests for copies of the modified text of the regulations may be directed to the contact person listed in this notice. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

TITLE 14. DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

NOTICE IS HEREBY GIVEN that the Department of Resources Recycling and Recovery (Department), pursuant to the authority vested in it by sections 87300 and 87306 of the Government Code, proposes adoption of its conflict of interest code. The Department is replacing the conflict of interest code of the former

California Integrated Waste Management Board (Cal. Code Regs., title 14, § 18419) with the Department's newly adopted code. The purpose of adopting this conflict of interest code is to implement the requirements of sections 87300 through 87302, and section 87306 of the Government Code.

The Department proposes adopting a conflict of interest code that includes employee positions that involve making decisions or participating in making decisions that may foreseeably have a material effect on any financial interest, as set forth in subdivision (a) of section 87302 of the Government Code.

The conflict of interest code will list position titles that involve making governmental decisions by (1) voting on a matter, (2) obligating or committing the Department, or (3) entering into contractual agreements for the Department. The conflict of interest code will also list position titles that participate in the making of governmental decisions by (1) negotiating on behalf of the Department or (2) advising or making recommendations to the decision maker by (a) conducting research or (b) preparing reports, analyses or opinions.

Rather than listing designated positions according to a detailed, multi-layered organizational structure, the Department is listing designated positions by classifications and series, irrespective of the work unit to which the positions are assigned. This reduces the need to make sweeping changes to the conflict of interest code based only on working titles, branch or unit name changes, and reorganizations.

Copies of the proposed conflict of interest code are available and may be requested from the Contact Person set forth below.

Any interested person may submit written statements, arguments, or comments relating to the proposed conflict of interest code by submitting them in writing no later than August 23, 2010, or at the conclusion of the public hearing, if requested, whichever comes later, to the Contact Person set forth below.

At this time, no public hearing has been scheduled concerning the proposed conflict of interest code. If any interested person or the person's representative requests a public hearing, he or she must do so no later than August 9, 2010, by contacting the Contact Person set forth below.

The Department has prepared a written explanation of the reasons for adopting the proposed conflict of interest code and has available the information on which the code is based. Copies of the proposed conflict of interest code, the written explanation of the reasons, and the information on which the code is based may be obtained by contacting the Contact Person set forth below.

The Department has determined that adopting the proposed conflict of interest code:

1. Imposes no mandate on local agencies or school districts.
2. Imposes no costs or savings on any state agency.
3. Imposes no costs on any local agency or school district that are required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.
4. Will not result in any nondiscretionary costs or savings to local agencies.
5. Will not result in any costs or savings in federal funding to the state.
6. Will not have any potential cost impact on private persons, businesses or small businesses.

In proposing the adoption of this conflict of interest code, the Department must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the code is proposed or would be as effective and less burdensome to affected persons than the proposed code.

All inquiries concerning adoption of this proposed conflict of interest code and any communication required by this notice should be directed to:

Sue O'Connell
 Department of Resources Recycling and Recovery
 (CalRecycle)
 Administration and Finance Division/Human
 Resources
 1001 "I" Street
 P.O. Box 4026, MS 19A
 Sacramento, CA 95812-4025
 Telephone: (916) 341-6086
 Fax: (916) 319-7289
 e-mail: Sue.OConnell@CalRecycle.ca.gov

TITLE 22. DEPARTMENT OF HEALTH CARE SERVICES

ACTION: Notice of Emergency Rulemaking
 Title 22, California Code of Regulations
SUBJECT: Drug Medi-Cal Rates, DHCS-09-011E

The Department of Health Care Services (Department) has adopted the regulations described in this notice on an emergency basis and they are now in effect.

PUBLIC PROCEEDINGS

Notice is hereby given that the Department will conduct written public proceedings, during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions (all of which are hereinafter referred to as "comments") relevant to the action described in this notice.

INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW

This emergency regulatory action amends Title 22, California Code of Regulations (CCR), Section 51516.1, by updating Medi-Cal reimbursement rates for substance abuse (Drug Medi-Cal) services for FY 2003–2004 through FY 2009–2010. This emergency action implements, interprets, and makes specific the provisions of Welfare and Institutions Code (WIC) Sections 14021.5, 14021.6 and 14105, and Health and Safety Code (HSC) Section 11758.42. These provisions require the Department of Alcohol and Drug Programs (ADP), in consultation with the Department, to establish rates for Drug Medi-Cal (DMC) services, establish a dosing fee for Methadone and Levoalphacetylmethadol (LAAM), and establish a per capita uniform statewide reimbursement rate for ancillary services.

This emergency regulatory action is necessary to implement WIC Sections 14021.5 and 14021.6 and HSC Sections 11758.42 and 11758.46. WIC Section 14021.5 specifies that rates for Drug Medi-Cal services shall be effective July 1 through June 30 of the fiscal year in which the rates are established. WIC Section 14021.6 and HSC Section 11758.42 specify how rates for Drug Medi-Cal services shall be determined, HSC Section 11758.42 requires ADP to establish rates for the use of the narcotic replacement drugs Methadone and LAAM. HSC Section 11758.46 specifies Drug Medi-Cal services which are reimbursable through the Medi-Cal program.

Specific changes are described below:

- Section 51516.1(a): Revised to reflect that Senate Bill (SB) 1838, Chapter 862, Statutes of 2004, Section 36 renamed Day Care Habilitative to Day Care Rehabilitative.
- Section 51516.1(a)(2): Replaced “rendering” with the more common term “providing” based on its use in HSC Section 11848.5. Replaced the term “defined” with the more accurate term “specified” since HSC Section 11848.5 specifies information, it does not provide definitions. Replaced Section 11987.5 with Section 11848.5 of the HSC as the appropriate reference. Section 11848.5 replaced Section 11987.5 in January 2005 due to SB 1838, Statutes of 2004, Chapter 862, Sections 120 and 134.
- Section 51516.1(a)(3): The fiscal years were updated to FY 2003–2004 through FY 2009–2010. This clarifies the fiscal year scope of the regulations.
- The statewide maximum allowances (SMAs) for FY 2003–2004 through FY 2009–2010 have been revised and are indicated below in the sequence of how each Budget Act impacted rate development. ADP established the rates in accordance with WIC Section 14021.6 and each fiscal Year’s Budget Act. The SMAs are based on the median rates from the most recently completed cost data for each modality as reported by county-operated providers and county-contracted providers.
 - ▶ The proposed FY 2003–2004, DMC reimbursement rates are based on cost report data from FY 2001–2002.
 - ▶ The FY 2004–2005 Budget Act (SB 1113, Statutes of 2004, Ch. 208, Item 4200–102–0001, Provision 5 and Item 4200–103–0001 Provision 5) approved the FY 2004–2005 DMC rates at the FY 2002–2003 rate levels, which are based on cost report data from FY 2000–2001.
 - ▶ The FY 2005–2006 Budget Act (SB 77, Statutes of 2005, Ch. 38, Item 4200–102–0001, Provision 4 and Item 4200–103–0001, Provision 5) authorized the FY 2005–2006 DMC reimbursement rates at the FY 2002–2003 rate levels with an augmentation of \$1,104,000 General Fund monies.
 - ▶ The FY 2006–2007 Budget Act (AB 1801, Statutes of 2006, Ch. 47, Governor’s Objections Section) indicated that of the combined amounts appropriated in Items 4200–102–0001 and 4200–103–0001, \$1,000 additional was appropriated to increase the FY 2006–2007 rates above the FY 2005–2006 rates. Because of this small amount, FY 2006–2007 used the FY 2005–2006 rates.
 - ▶ The rates for FYs 2003–2004, 2007–2008 and 2008–2009 were developed in accordance with the established rate-setting methodologies, since there was no reduced Governor’s Budget for ADP as occurred in other FYs.
 - ▶ The specific methodology used to calculate Drug Medi-Cal SMAs is described in the document entitled “Drug Medi-Cal Rate Setting Methodology, For Non-Narcotic Treatment Programs, For Fiscal Year 2003–2004 through FY 2009–2010.” This document is included in the Department’s

rulemaking file, which is maintained by the Department's Office of Regulations.

- ▶ The FY 2004–2005 Budget Act approved the Drug Medi-Cal rates at the FY 2002–03 levels. Therefore there was no Drug Medi-Cal Rate Setting Methodology for FY 2004–2005 published.
- ▶ The FY 2005–2006 Budget Act approved the DMC rates at the FY 2002–2003 levels but also provided \$1,104,000 in General Funds to augment above the FY 2002–2003 levels. After calculation of the FY 2005–2006 rates based on the regular methodology, calculation of the FY 2005–2006 augmented rates is described in the document entitled “FY 2005–2006 Drug Medi-Cal Augmented Rate Methodology For Narcotic and Non-Narcotic Treatment Programs,” and is included in the Department's rulemaking file, which is maintained by the Department's Office of Regulations.
- ▶ The FY 2009–10 Budget Act contained a 10 percent rate reduction to the reimbursement rates developed under the customary rate-development methodologies (see ABX44, Chapter 4, Statutes of 2009, Section 31).
- Section 51516.1(a)(3)(A) was revised to add “treatment” between “outpatient drug free” and “services” for accuracy.
- Section 51516.1(a)(3)(A)1. was revised to make a grammatical correction.
- Section 51516.1(a)(3)(A)2. was revised to make a grammatical correction.
- Section 51516.1(b)(1) was revised to delete the reference to the “monthly” reimbursement rate. AB 1279, Statutes of 2008, Ch. 759, revised HSC Section 11758.42(c) to specify that reimbursement for narcotic replacement therapy. . . shall be based on a per capita statewide daily reimbursement rate. Therefore, Sections 51516.1(b), (c), (d), (f) and (g) were revised to replace “Uniform Statewide Monthly Reimbursement (USMR)” rate with “Uniform Statewide Reimbursement (USR)” rate.
- Section 51516.1(g) was revised to update the uniform statewide reimbursement rates (USRs) for narcotic treatment program services for FY 2003–2004 through FY 2009–2010. The specific methodology used to calculate narcotic treatment USRs are described in the document entitled “Narcotic Treatment Program — Uniform Statewide Reimbursement Rates and

Methodology, FY 2003–2004 Through FY 2009–2010.” This document is included in the Department's rulemaking file, which is maintained by the Department's Office of Regulations.

- ▶ The FY 2004–2005 Budget Act approved the Drug Medi-Cal rates at the FY 2002–2003 levels. Therefore, there was no Narcotic Treatment Program — Uniform Statewide Reimbursement Rates and Methodology for FY 2004–2005 published.
- ▶ The FY 2005–2006 Budget Act approved the DMC rates at the FY 2002–2003 levels but also provided \$1,104,000 in General Funds to augment above the FY 2002–2003 levels. After calculation of the FY 2005–2006 rates based on the regular methodology, calculation of the FY 2005–2006 augmented rates is described in the document entitled “FY 2005–2006 Drug Medi-Cal Augmented Rate Methodology For Narcotic and Non-Narcotic Treatment Programs,” and is included in the Department's rulemaking file, which is maintained by the Department's Office of Regulations.
- ▶ For FY 2006–2007 and FY 2007–2008, LAAM was deleted from the narcotic treatment program rate tables. LAAM was discontinued from the United States market in August 2003 because of reports of adverse cardiac-related events.
- ▶ The FY 2009–10 Budget Act contained a 10 percent rate reduction to the reimbursement rates developed under the customary rate-development methodologies (see ABX44, Chapter 4, Statutes of 2009, Section 31).

AUTHORITY

Sections 10725, 14021.3, 14021.5, 14021.6, 14105 and 14124.5, Welfare and Institutions Code; and Sections 20 and 11758.42, Health and Safety Code.

REFERENCE

Sections 5705, 5715, 14021.5, 14021.6, 14021.9 and 14132.90. Welfare and Institutions Code; and Sections 11758.42 and 11758.46, Health and Safety Code.

COMMENTS

Any written comments pertaining to these regulations, regardless of the method of transmittal, must be

received by the Office of Regulations by 5 p.m. on August 27, 2010, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely. Persons wishing to use the California Relay Service may do so at no cost. The telephone numbers for accessing this service are: 1-800-735-2929, if you have a TDD; or 1-800-735-2922, if you do not have a TDD. Written comments may be submitted as follows:

1. By mail or hand-delivered to the Office of Regulations, Department of Health Care Services, MS 0015, 1501 Capitol Avenue, P.O. Box 997413, Sacramento, CA 95899-7413; or
2. By fax transmission: (916) 440-5748; or
3. By email to regulations@dhcs.ca.gov (it is requested that email transmissions of comments, particularly those with attachments, contain the regulation package identifier "DHCS-09-011E" in the subject line to facilitate timely identification and review of the comment).

All comments, including email or fax transmissions, should include the author's name and U.S. Postal Service mailing address in order for the Department to provide copies of any notices for proposed changes to the regulation text on which additional comments may be solicited.

INQUIRIES

Inquiries regarding the substance of the emergency regulations described in this notice may be directed to Linda Machado of the Rate Development Branch, at (916) 552-9638.

All other inquiries concerning the action described in this notice may be directed to Lori Manieri of the Office of Regulations at (916) 650-6825, or to the designated backup contact person, Lynette Cordell, at (916) 440-7695.

CONTACTS

In any inquiries or written comments, please identify the action by using the Department regulation package identifier, DHCS-09-011E.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS

The Department has prepared and has available for public review an initial statement of reasons for the emergency regulations, all the information upon which the emergency regulations are based, and the text of the emergency regulations. The Office of Regulations, at

the address noted above, will be the location of public records, including reports, documentation, and other material related to the emergency regulations (rule-making file). In addition, a copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations.

Materials regarding the action described in this notice (including this public notice, the regulation text, and the initial statement of reasons) that are available via the Internet may be accessed at www.dhcs.ca.gov by clicking on the Decisions Pending and Opportunity for Public Participation link (from the left menu), then selecting the Proposed Regulations link.

In order to request a copy of this public notice, the regulation text, and the initial statement of reasons be mailed to you, please call (916) 440-7695 (or California Relay at 711/1-800-735-2929), or email regulations@dhcs.ca.gov, or write to the Office of Regulations at the address noted above. Upon specific request, these documents will be made available in Braille, large print, and audiocassette or computer disk.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The full text of any regulation which is changed or modified from the express terms of the emergency action will be made available by the Department's Office of Regulations at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

FISCAL IMPACT ESTIMATE

- A. Fiscal Effect on Local Government: None.
- B. Fiscal Effect on State Government: State General Funds for this program are budgeted by ADP and the federal funding is budgeted by the Department.
- C. Fiscal Effect on Federal Funding of State Programs: \$10,297,000 (savings) in Federal Financial Participation for FY 2009-10.
- D. All cost impacts, known to the Department at the time the notice of proposed action was submitted to the Office of Administrative Law, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- E. Other Nondiscretionary Costs or Savings including Revenue Changes imposed on State or Local Governments: None.

DETERMINATIONS

The Department has determined that the emergency regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

The Department has made an initial determination that the emergency regulations would not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The Department has determined that the emergency regulations would not significantly affect the following:

- (1) The creation or elimination of jobs within the State of California.
- (2) The creation of new businesses or the elimination of existing businesses within the State of California.
- (3) The expansion of businesses currently doing business within the State of California.

The Department has determined that the emergency regulations would only affect small businesses that voluntarily provide Drug Medi-Cal services.

The Department has determined that the emergency regulations will have no impact on housing costs.

ADDITIONAL STATEMENTS AND COMMENTS

In accordance with Government Code Section 11346.5(a)(13), the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

No public hearing has been scheduled; however, any interested person or his or her duly authorized representative may request in writing, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Government Code Section 11346.8. The Department shall consider all comments received regarding the proposal equally, whether submitted in writing or through oral testimony at a public hearing.

For individuals with disabilities, the Department will provide assistive services such as sign-language interpretation, real-time captioning, note takers, reading or writing assistance, and conversion of public hearing materials into Braille, large print, audiocassette, or computer disk. To request such services or copies in an alternate format, please call or write: Susan Pierson, Office of Regulations, MS 0015, P. O. Box 997413, Sacra-

mento, CA 95899-7413; voice (916) 440-7695; and/or California Relay 711/1-800-735-2929. Note: The range of assistive services available may be limited if requests are received less than ten business days prior to a public hearing.

TITLE 27. OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

NOTICE OF PROPOSED RULEMAKING

TITLE 27, CALIFORNIA CODE OF REGULATIONS

AMENDMENT TO SECTION 25805 SPECIFIC REGULATORY LEVELS: CHEMICALS CAUSING REPRODUCTIVE TOXICITY

MAXIMUM ALLOWABLE DOSE LEVEL: CADMIUM

NOTICE IS HEREBY GIVEN that the Office of Environmental Health Hazard Assessment (OEHHA) proposes to add a qualifier "oral" to a specific regulatory level having no observable effect for cadmium and amend Title 27, California Code of Regulations, Section 25805¹.

The maximum allowable dose level of 4.1 micrograms per day for cadmium was first adopted in Title 27, California Code of Regulations, Section 25805, on August 19, 2002. The level was derived based on a risk assessment document entitled, "Proposition 65 Maximum Allowable Dose Level (MADL) for Reproductive Toxicity for Cadmium (Oral Route) (May 2001)," which is part of the rulemaking file. The level was inadvertently adopted without the qualifier "(oral)." OEHHA is proposing to add the qualifying term, "(oral)" to the level to clarify that the adopted MADL of 4.1 micrograms per day for cadmium was and continues to be specific for the oral route of exposure.

PUBLIC PROCEEDINGS

Any written statements or arguments regardless of the form or method of transmission must be received by OEHHA by 5:00 p.m. on **Monday, August 23, 2010**, the designated close of the written comment period.

Written comments regarding this proposed action can be sent by e-mail, mail or by fax addressed to:

¹ All further regulatory references are to Title 27 of the California Code of Regulations unless otherwise indicated.

Susan Luong
Office of Environmental Health Hazard Assessment
Proposition 65 Implementation Program
P.O. Box 4010
Sacramento, California 95812-4010
FAX: (916) 323-8803
Telephone: (916) 445-6900
sluong@oehha.ca.gov

Comments sent by courier should be delivered to:

Susan Luong
Office of Environmental Health Hazard Assessment
1001 I Street, 19th Floor
Sacramento, California 95814

It is requested but not required that written statements or arguments be submitted in triplicate.

A public hearing to present oral comments will be scheduled only if one is requested. The request must be submitted in writing no later than 15 days before the close of the comment period on August 23, 2010. The written request must be sent to OEHHA at the address listed above no later than **Monday, August 9, 2010**. A notice for the public hearing, if one is requested, will be mailed to interested parties who are on the Proposition 65 mailing list for regulatory public hearings. The notice will also be posted on the OEHHA web site at least ten days in advance of the public hearing date. The notice will provide the date, time, location and subject matter to be heard.

If a hearing is scheduled and you have special accommodation or language needs, please contact Susan Luong at (916) 445-6900 or sluong@oehha.ca.gov at least one week in advance of the hearing. TTY/TDD/Speech-to-Speech users may dial 7-1-1 for the California Relay Service.

CONTACT

Please direct inquiries concerning the substance and processing of the action described in this notice to Susan Luong, in writing at the address given above, or by telephone at (916) 445-6900. Ms. Cynthia Oshita is a back-up contact person for inquiries concerning processing of this action and is available at the same telephone number.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code section 25249.5 et seq. and commonly known as Proposition 65 (hereinafter Proposition 65 or the Act), prohibits a person in the course of doing business from knowingly and

intentionally exposing any individual to a chemical that has been listed as known to the State to cause cancer or reproductive toxicity, without first giving clear and reasonable warning to such individual (Health and Safety Code section 25249.6). The Act also prohibits a business from knowingly discharging a listed chemical into water or onto or into land where such chemical passes or probably will pass into any source of drinking water (Health and Safety Code section 25249.5).

For chemicals known to the state to cause reproductive toxicity, an exemption from the warning requirement is provided by the Act when a person in the course of doing business is able to demonstrate that an exposure for which the person is responsible produces no observable reproductive effect, assuming exposure at 1,000 times the level in question (Health and Safety Code sections 25249.9, 25249.10 and 25249.11). The maximum dose level at which a chemical has no observable reproductive effect is referred to as the no observable effect level (NOEL). The Act also provides an exemption from the prohibition against discharging a listed chemical into sources of drinking water if the amount discharged does not constitute a "significant amount," as defined, and the discharge is in conformity with all other laws and regulatory requirements (Health and Safety Code sections 25249.9 and 25249.11). Thus, these exemptions apply when the exposure or discharge in question is at a level that does not exceed the NOEL divided by 1,000.

Regulations previously adopted by the Office of Environmental Health Hazard Assessment (OEHHA) provide guidance for determining whether an exposure to, or a discharge of, a chemical known to cause reproductive toxicity meets the statutory exemption (Title 27, California Code of Regulations, sections 25801-25821). These regulations provide three ways by which a person in the course of doing business may make such a determination: (1) by conducting a risk assessment in accordance with the principles described in Section 25803 to derive a NOEL, and dividing the NOEL by 1,000; or (2) by application of the specific regulatory level adopted for the chemical in Section 25805; or (3) in the absence of such a level, by using a risk assessment conducted by a state or federal agency, provided that such assessment substantially complies with Section 25803(a). The specific regulatory levels in Section 25805 represent one one-thousandth of the NOEL.

This proposed amendment is adding the qualifying term, "(oral)" to the already adopted maximum allowable dose level (MADL) for cadmium which was derived using scientific methods outlined in Section 25803.

Details on the basis for the level are provided in the reference cited below, which is also included in the rule-

making record. The reference is a risk assessment document prepared by OEHHA describing and summarizing the derivation of the regulatory level listed below.

The proposed amendment would adopt the following qualifying term, “(oral)” to the level for cadmium, a chemical known to cause reproductive toxicity, in Section 25805:

Chemical	MADL, in units micrograms per day	Reference
Cadmium	4.1 (oral)	OEHHA (2001)

The risk assessment which was used by the Office of Environmental Health Hazard Assessment to determine the stated level is as follows:

Office of Environmental Health Hazard Assessment (OEHHA, 2001). Proposition 65 Maximum Allowable Dose Level (MADL) for Reproductive Toxicity for Cadmium (Oral Route). OEHHA Reproductive and Cancer Hazard Assessment Section, California Environmental Protection Agency, Sacramento, May 2001.

AUTHORITY

Health and Safety Code Section 25249.12.

REFERENCE

Health and Safety Code Sections 25249.5, 25249.6, 25249.9, 25249.10 and 25249.11.

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

OEHHA has determined the proposed regulatory action would not pose a mandate on local agencies or school districts nor does it require reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. OEHHA has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action.

COSTS OR SAVINGS TO STATE AGENCIES

OEHHA has determined that no savings or increased costs to any State agency will result from the proposed regulatory action.

EFFECT ON FEDERAL FUNDING TO THE STATE

OEHHA has determined that no costs or savings in federal funding to the State will result from the proposed regulatory action.

EFFECT ON HOUSING COSTS

OEHHA has determined that the proposed regulatory action will have no effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE

OEHHA has made an initial determination that the adoption of the regulation will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

IMPACT ON THE CREATION, ELIMINATION, OR EXPANSION OF JOBS/BUSINESSES

OEHHA has determined that the proposed regulatory action will not have any impact on the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business within the State of California.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The OEHHA is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON SMALL BUSINESSES

OEHHA has determined that the proposed regulation will not impose any requirements on small business. Rather, the proposed regulation will assist small businesses subject to the Act in determining whether or not an exposure for which they are responsible is subject to the warning requirement or discharge prohibition.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), OEHHA must determine that no reasonable alternative considered by OEHHA or that has otherwise been identified and brought to the attention of OEHHA would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

OEHHA has prepared and has available for public review an Initial Statement of Reasons for the regulation, all the critical information upon which the regulation is based, and the text of the regulation. A copy of the Initial Statement of Reasons, a copy of the text of the regulation and a copy of the risk assessment which was used by OEHHA to determine the MADL are available upon request from OEHHA's Proposition 65 Implementation Program at the address and telephone number indicated above. These documents are also posted on OEHHA's Web site at www.oehha.ca.gov.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The full text of any regulation which is changed or modified from the express terms of the proposed action will be made available at least 15 days prior to the date on which OEHHA adopts the resulting regulation. Notice of the comment period on changed regulations and the full text will be mailed to individuals who testified or submitted written comments at the public hearing, whose comments were received by OEHHA during the public comment period, and who request notification from OEHHA of availability of such changes. Copies of the notice and the changed regulation will also be available at OEHHA's Web site at www.oehha.ca.gov.

FINAL STATEMENT OF REASONS

A copy of the Final Statement of Reasons may be obtained, when it becomes available, from OEHHA's Proposition 65 Implementation Program at the address and telephone number indicated above. The Final Statement of Reasons will also be available at OEHHA's Web site at www.oehha.ca.gov.

GENERAL PUBLIC INTEREST

CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER AN APPLICATION FOR A VARIANCE FROM THE REGULATION FOR REDUCING EMISSIONS FROM CONSUMER PRODUCTS

At the direction of the Executive Officer of the California Air Resources Board, (ARB or Board) a public hearing will be conducted at the following time and

place to consider an application for a variance from the Regulation for Reducing Emissions from Consumer Products (the "Consumer Products Regulation," title 17, California Code of Regulations, sections 94507–94517.) A delegate of the Executive Officer of the Air Resources Board will hear evidence on whether the granting of a variance is appropriate.

DATE: August 11, 2010

TIME: 10:00 a.m.

PLACE: California Air Resources Board
Monitoring and Laboratory Division
1st Floor Conference Room
1927 13th Street
Sacramento, California 95811

BACKGROUND

Section 94509(a) of the Consumer Products Regulation specifies volatile organic compound (VOC) limits for Air Freshener — Single Phase Aerosol products. The current VOC limits have been in effect since January 1, 1996. In addition, section 94514 of the Consumer Products Regulation allows any person who cannot comply with the requirements of section 94509, because of extraordinary reasons beyond the person's reasonable control, to apply to the Executive Officer for a variance. The criteria and procedures for granting a variance are also specified in section 94514.

On May 28, 2010, the applicant listed below applied for a variance from the 30 percent VOC by weight limit for the Air Freshener — Single Phase Aerosol category of the Consumer Products Regulation, for "Air Wick Freshmatic" products sold in California.

Reckitt Benckiser, Inc.
399 Interpace Parkway
P.O. Box 255
Parsippany, NJ 07054–0225

In accordance with section 94514, the applicant has the right to a hearing by ARB to consider the variance request, within 75 days of the date of application.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

The public may request a copy of the variance application from ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California, 95814, (916) 322–2990.

Further inquiries regarding this matter should be directed to Ms. Lori Gilbert, Air Pollution Specialist, at (916) 322–2362; or to Mr. David Mallory, Manager, Measures Development Section at (916) 445–8316.

HEARING PROCEDURES

The public hearing to consider the variance application will be conducted in accordance with procedures set forth in section 94514 of the Consumer Products Regulation. At the hearing, the applicant will be asked to present evidence demonstrating that the criteria for granting a variance have been met. Interested members of the public will be allowed a reasonable opportunity to testify at the hearing. All parties may, but need not, be represented by counsel at the hearing. Subsequent to the hearing, the Hearing Officer shall determine whether, under what conditions, and to what extent a variance is necessary and will be permitted.

SPECIAL ACCOMMODATION REQUEST

If you require a special accommodation or need this document in an alternate format (i.e. Braille, large print) or another language, please contact Mr. David Mallory, Manager, Measures Development Section at (916) 445-8316 as soon as possible, but no later than 10 business days before the scheduled meeting. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

DEPARTMENT OF FISH AND GAME

Department of Fish and Game —

Public Interest Notice

For Publication July 9, 2010

CESA CONSISTENCY DETERMINATION REQUEST FOR

Interstate 580 Westbound High Occupancy Vehicle
Lane Project (2080-2010-026-03)
Alameda County

The Department of Fish and Game (Department) received a notice on June 24, 2010 that the California Department of Transportation (Caltrans) proposes to rely on a consultation with a federal agency to carry out a project that may adversely affect species protected by the California Endangered Species Act (CESA). The proposed action involves construction of a westbound high occupancy vehicle (HOV) lane along a 13.1-mile segment of Interstate 580, beginning west of the Greenville Road undercrossing (post mile 8.29) and ending east of the San Ramon Blvd/Foothill Road overcrossing (post mile 21.43), in eastern Alameda County (Project).

Project activities will result in the permanent loss of 0.013 acres of breeding habitat and 8.55 acres of upland habitat for the California tiger salamander (*Ambystoma californiense*). Project activities will also result in the permanent loss of 21.21 acres of habitat for the San Joaquin kit fox (*Vulpes macrotis mutica*). The Project could result in direct mortality, injury, or harassment of

individual California tiger salamanders and San Joaquin kit foxes in the Project disturbance area. The U.S. Fish and Wildlife Service (Service) issued a “no jeopardy” federal biological opinion (81420-2008-F-0487-2)(BO) and incidental take statement (ITS) to Caltrans on September 17, 2009 which considered the effects of the project on the Federally threatened and State candidate California tiger salamander, and the Federally endangered and State threatened San Joaquin kit fox.

On March 3, 2010, the California Fish and Game Commission, the California constitutionally established entity with exclusive statutory authority to designate species as protected under CESA, determined that listing California tiger salamander as a threatened species under state law is warranted. (Cal. Const., art. IV, § 20, subd. (b); Fish & G. Code, §§ 2070, 2075.5(2).) Consistent with the Commission’s determination, California tiger salamander will be added to the list of species designated as threatened under CESA following the completion of related formal rulemaking by the Commission under the Administrative Procedure Act (Gov. Code, § 11340 et seq.). (See also Fish & G. Code, 2075.5(2); Cal. Code Regs., tit. 14, 670.1, subd. (j), 670.5, subd. (b).) In the interim, California tiger salamander will remain a candidate species protected under CESA. (Fish & G. Code, 2085; Cal. Reg. Notice Register 2009, No. 8-Z, p. 284.)

Pursuant to California Fish and Game Code Section 2080.1, Caltrans is requesting a determination that the BO and ITS are consistent with CESA for purposes of the proposed Project. If the Department determines the BO and ITS are consistent with CESA for the proposed Project, Caltrans will not be required to obtain an incidental take permit under Fish and Game Code section 2081 for the Project.

DEPARTMENT OF FISH AND GAME

Department of Fish and Game —

Public Interest Notice

For Publication July 9, 2010

CESA CONSISTENCY DETERMINATION REQUEST FOR

Pease-Rio Oso 115 kV Tower Replacement Project
(2080-2010-027-02)
Sutter and Yuba Counties

The Department of Fish and Game (Department) received a notice on June 25, 2010 that the Pacific Gas and Electric Company (PG&E) proposes to rely on a consultation between federal agencies to carry out a project that may adversely affect a species protected by the California Endangered Species Act (CESA). PG&E pro-

poses to remove six existing electrical transmission towers and replace them with five tubular steel poles in southern Yuba and northern Sutter Counties (Project). The deterioration of the existing equipment requires replacement of tower structures to maintain reliability of service and prevent power outages.

Project activities will result in the temporary loss of 3.61 acres of upland habitat and the temporary loss of 0.05 acre of aquatic habitat suitable for the giant garter snake, (*Thamnophis gigas*). The Project could also result in direct mortality, injury, or harassment of individual giant garter snakes. The U.S. Fish and Wildlife Service (Service) appended the proposed project to a “no jeopardy” federal biological opinion (81420–2010–F–0180–1) and incidental take statement (ITS) on June 4, 2010 for the U.S. Army Corps of Engineers. The Service’s consultation with the U.S. Army Corps of Engineers considered the effects of the Project on the State and federally threatened giant garter snake.

Pursuant to California Fish and Game Code Section 2080.1, PG&E is requesting a determination that the BO and ITS as amended are consistent with CESA for purposes of the proposed Project. If the Department determines the BO and ITS are consistent with CESA for the proposed Project, PG&E will not be required to obtain an incidental take permit under Fish and Game Code section 2081 for the Project.

DEPARTMENT OF FISH AND GAME

Department of Fish and Game — Public Interest Notice

For Publication July 9, 2010
CESA CONSISTENCY DETERMINATION
REQUEST FOR
Valley Ranch Road Crossings Project
(2080–2010–028–02)
Colusa County

The Department of Fish and Game (Department) received a notice on June 28, 2010 that the Vann Brothers (Applicant) propose to rely on a consultation between federal agencies to carry out a project that may adversely affect a species protected by the California Endangered Species Act (CESA). The Applicant proposes to construct two road crossings and install a water main within an unnamed agricultural ditch adjacent to Husted Road in Williams, Colusa County (Project). Two existing agricultural road crossings will also be removed from the ditch.

Project activities will result in the permanent loss of 0.33 acre of aquatic habitat suitable for the giant garter snake, (*Thamnophis gigas*). The Project could also re-

sult in direct mortality, injury, or harassment of individual giant garter snakes. The U.S. Fish and Wildlife Service (Service) appended the proposed project to a “no jeopardy” federal biological opinion (81420–2010–F–0050–1) and incidental take statement (ITS) on November 16, 2009 for the U.S. Army Corps of Engineers. The Service’s consultation with the U.S. Army Corps of Engineers considered the effects of the Project on the State and federally threatened giant garter snake.

Pursuant to California Fish and Game Code Section 2080.1, the Applicant is requesting a determination that the BO and ITS as amended are consistent with CESA for purposes of the proposed Project. If the Department determines the BO and ITS are consistent with CESA for the proposed Project, the Applicant will not be required to obtain an incidental take permit under Fish and Game Code section 2081 for the Project.

PROPOSITION 65

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65)

NOTICE TO INTERESTED PARTIES July 9, 2010

PRIORITIZATION: CHEMICALS IDENTIFIED FOR CONSULTATION WITH THE PROPOSITION 65 CARCINOGEN IDENTIFICATION COMMITTEE AND MEETING ANNOUNCEMENT

This notice announces the beginning of the public comment period on the 27 chemicals listed below. These chemicals will be discussed at the next meeting of the Proposition 65 Carcinogen Identification Committee (CIC). The CIC is the state’s qualified expert on carcinogenicity for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986¹ (Proposition 65). The CIC’s next meeting is scheduled for **Tuesday and Wednesday, September 21 and 22, 2010**, when the CIC will provide OEHHHA with advice on the priori-

tization of these chemicals for possible preparation of hazard identification materials. At a later date, OEHHA will select chemicals for preparation of hazard identification materials and announce those decisions in a separate notice. **No listing decisions will be made for these chemicals at the September 21 and 22 meetings.**

The Office of Environmental Health Hazard Assessment (OEHHA) is the lead agency for the implementation of Proposition 65. OEHHA has screened several hundred chemicals in the OEHHA tracking database for evidence of cancer hazard as well as potential human exposure in California. This initial screening follows the procedure described in the 2004 "Process for Prioritizing Chemicals for Consideration under Proposition 65 by the State's Qualified Experts," which is available at http://www.oehha.ca.gov/prop65/CRNR_notices/state_listing/pdf/finalPriordoc.pdf.

OEHHA applied both a human and animal data screen to roughly 75 percent of the candidate chemicals in the tracking database. These screens were discussed at the November 17, 2007 and November 5, 2008 meetings of the CIC. OEHHA conducted a preliminary toxicological evaluation for the chemicals that passed the two screens. Based on this preliminary evaluation, OEHHA identified the 27 chemicals listed below for committee discussion, advice and possible preparation of hazard identification materials for consideration at future CIC meetings.

The 27 chemicals are:

- Acephate
- Alpha-methyl styrene (1-methyl-1-phenylethylene)
- Amitraz
- Atrazine
- 2-Biphenylamine and its salts
- Budesonide
- 4-Chloro-*m*-phenylenediamine
- C.I. Acid Orange 3
- Ciprofibrate
- Clomiphene and its salts
- Decabromodiphenyl ether (DecaBDE; decabromobiphenyl oxide)
- Decalin
- 2,6-Dichloro-*p*-phenylenediamine
- Furfural
- Gentian Violet
- 4-Hydroxymethyl, 4-Methyl, and 4-Hydroxy Benzenediazonium and their salts
- Isoniazid

- Malathion
- 7-Methylbenz[*a*]anthracene
- *N*-Methyl-*N*-formylhydrazine
- Methylphenidate and its salts
- Omeprazole and its salts
- Pantoprazole and its salts
- Perfluorooctane sulfonate (PFOS) and its salts and transformation and degradation precursors
- Phosmet
- Quinoxaline-1,4-dioxide compounds and Desoxycarbadox
- Rabeproazole and its salts

The CIC meeting will be held in the Sierra Hearing Room at the Cal/EPA Headquarters building, 1001 I Street in Sacramento, California. The meeting will begin each day at 10:00 a.m. and will last until 5:00 p.m. on Tuesday and until all business is conducted or until 5:00 p.m. on Wednesday. The agenda for the two-day meeting will be provided in a future public notice published in advance of the meeting.

Copies of the summaries of available scientific information on the chemicals and related attachments are available on OEHHA's web site at <http://www.oehha.ca.gov/prop65.html>, or may be requested by calling (916) 445-6900.

Interested parties may provide comment on the extent of the scientific evidence pertaining to the selection and priority of any of these chemicals for possible preparation of hazard identification materials. **OEHHA must receive comments and any supporting documentation by 5:00 p.m. on Tuesday, August 31, 2010.** The comment period is abbreviated by one week to allow for sufficient time for the CIC members to review comments along with the summaries and related attachments prior to the meeting. We encourage you to submit comments in electronic form, rather than in paper form. Comments transmitted by e-mail should be addressed to coshita@oehha.ca.gov.

Comments submitted in paper form may be mailed, faxed, or delivered in person to the addresses below:

Mailing Address: Ms. Cynthia Oshita
Office of Environmental Health
Hazard Assessment
P.O. Box 4010, MS-19B
Sacramento, California
95812-4010

Fax: (916) 323-8803

Street Address: 1001 I Street
Sacramento, California 95814

OEHHA will organize and index the comments received and forward the information to the CIC members

¹ Health and Safety Code section 25249.5 et seq.

prior to the September 21 and 22 meetings at which the chemicals will be considered.

**OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT**

**California Environmental Protection Agency
Office of Environmental Health
Hazard Assessment
Notice to Interested Parties**

July 9, 2010

**ANNOUNCEMENT OF SECOND
PUBLIC COMMENT PERIOD**

**Draft Technical Support Documents on
Proposed Public Health Goals
for Methoxychlor and Selenium in
Drinking Water**

The Office of Environmental Health Hazard Assessment (OEHHA) of the California Environmental Protection Agency is announcing the availability of draft technical support documents for proposed Public Health Goals (PHGs) for methoxychlor and selenium in drinking water. The draft document for methoxychlor is an update of the risk assessment for the PHG published in 1999. OEHHA proposes to decrease the PHG for methoxychlor to 0.09 parts per billion (ppb) from the current value of 30 ppb, based on new data on adverse effects of methoxychlor in animal studies. The document for selenium represents a new proposed PHG of 30 ppb, based on data from adverse effects of selenium in a human population. The draft documents are posted on the OEHHA web site (www.oehha.ca.gov). OEHHA is soliciting comments on the draft reports during a 30-day comment period. The Office previously offered a 45-day public comment period and held a public workshop for selenium on May 19, 2010, and for methoxychlor on June 3, 2010.

This 30-day public comment period is the second and final request for public input. Written comments must be received at the OEHHA address below by 5:00 p.m. on August 9, 2010 to be considered during this document revision period. OEHHA follows the requirements set forth in Health and Safety Code Sections 57003(a) and 116365 for conducting the workshop and receiving public input.

The PHG technical support documents provide information on the health effects of contaminants in drinking water. The PHG is a level of drinking water contaminant at which adverse health effects are not expected to occur from a lifetime of exposure. The California Safe

Drinking Water Act of 1996¹ requires OEHHA to develop PHGs based exclusively on public health considerations.² PHGs published by OEHHA are considered by the California Department of Public Health in setting drinking water standards (Maximum Contaminant Levels, or MCLs).³

If you would like to receive further information on this announcement or have questions, please contact OEHHA at (510) 622-3170 or the address below.

Michael Baes (mbaes@oehha.ca.gov)
Pesticide and Environmental Toxicology Branch
Office of Environmental Health Hazard Assessment
California Environmental Protection Agency
1515 Clay St., 16th floor
Oakland, California, 94612

Attention: PHG Project

**OAL REGULATORY
DETERMINATIONS**

OFFICE OF ADMINISTRATIVE LAW

**DETERMINATION OF ALLEGED
UNDERGROUND REGULATION
(Summary Disposition)**

**(Pursuant to Government Code
Section 11340.5 and
Title 1, section 270, of the
California Code of Regulations)**

The attachments are not being printed for practical reasons or space considerations. However, if you would like to view attachments please contact Margaret Molina at (916) 324-6044 or mmolina@oal.ca.gov.

**DEPARTMENT OF CORRECTIONS AND
REHABILITATION**

Date: June 23, 2010
To: John Steffen
From: Chapter Two Compliance Unit
Subject: **2010 OAL DETERMINATION NO. 12(S)
(CTU2010-0504-01)**
(Summary Disposition issued pursuant to Gov. Code, sec. 11340.5; Cal. Code Regs., tit. 1, sec. 270(f))

¹ Codified at Health and Safety Code, section 116270 et. seq.

² Health and Safety Code section 116365(c)

³ Health and Safety Code section 116365(a) and (b)

Petition challenging as an underground regulation an Addendum to DOM¹ Supplement #019 (Inmate Visiting Procedure)

On April 30, 2010, you submitted a petition to the Office of Administrative Law (OAL) asking for a determination as to whether a rule regarding inmate visiting procedures constitutes an underground regulation. The rule is in the Addendum to DOM Supplement #019, effective January 2010. This Addendum to DOM Supplement #019 was issued by the warden at the California Correctional Training Facility and is attached hereto as Exhibit A.

In issuing a determination, OAL renders an opinion only as to whether a challenged rule is a “regulation” as defined in Government Code section 11342.600,² which should have been, but was not adopted pursuant to the Administrative Procedure Act (APA).³ Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment. OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

Generally, a rule which meets the definition of a “regulation” in Government Code section 11342.600 is required to be adopted pursuant to the APA. In some cases, however, the Legislature has chosen to establish exemptions from the requirements of the APA. Penal Code section 5058, subdivision (c), establishes exemptions expressly for the California Department of Corrections and Rehabilitation (CDCR):

(c) The following are deemed not to be “regulations” as defined in Section 11342.600 of the Government Code:

(1) Rules issued by the director applying solely to a particular prison or other correctional facility. . . .

¹ The DOM is the Department Operations Manual published by the California Department of Corrections and Rehabilitation.

² “Regulation” means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

³ Such a rule is called an “underground regulation” as defined in California Code of Regulations, title 1, section 250, subsection (a):

“Underground regulation” means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

This exemption is called the “local rule” exemption. It applies only when a rule is established for a single correctional institution.

In *In re Garcia* (67 Cal.App.4th 841, 845), the court discussed the nature of a “local rule” adopted by the warden for the Richard J. Donovan Correctional Facility (Donovan) which dealt with correspondence between inmates at Donovan:

The Donovan inter-institutional correspondence policy applies solely to correspondence entering or leaving Donovan. It applies to Donovan inmates in all instances.

The Donovan policy is not a rule of general application. It applies solely to Donovan and, under Penal Code section 5058, subdivision (c)(1), is not subject to APA requirements.

Similarly, the rule challenged by your petition applies solely to the inmates of the Correctional Training Facility. It was issued by Randy Grounds, Warden of the Correctional Training Facility. Inmates housed at other institutions are governed by those other institutions’ criteria for visiting procedures. The rule you challenged was issued by the Correctional Training Facility, and applies only to inmates at the Correctional Training Facility. Therefore, the rule is a “local rule” and is exempt from compliance with the APA pursuant to Penal Code section 5058(c)(1). It is not an underground regulation.⁴

The issuance of this summary disposition does not restrict your right to adjudicate the alleged violation of section 11340.5 of the Government Code.

/s/

SUSAN LAPSLEY
Director

⁴ The rule challenged by your petition is the proper subject of a summary disposition letter pursuant to title 1, section 270 of the California Code of Regulations. Subdivision (f) of section 270 provides:

(f)(1) If facts presented in the petition or obtained by OAL during its review pursuant to subsection (b) demonstrate to OAL that the rule challenged by the petition is not an underground regulation, OAL may issue a summary disposition letter stating that conclusion. A summary disposition letter may not be issued to conclude that a challenged rule is an underground regulation.

(2) Circumstances in which facts demonstrate that the rule challenged by the petition is not an underground regulation include, but are not limited to, the following:

(A) The challenged rule has been superseded.

(B) The challenged rule is contained in a California statute.

(C) The challenged rule is contained in a regulation that has been adopted pursuant to the rulemaking provisions of the APA.

(D) The challenged rule has expired by its own terms.

(E) An express statutory exemption from the rulemaking provisions of the APA is applicable to the challenged rule. (Emphasis added.)

/s/

Elizabeth A. Heidig
Staff Counsel

Copy: Matthew Cate
John McClure

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Date: June 23, 2010

To: John Steffen

From: Chapter Two Compliance Unit

Subject: **2010 OAL DETERMINATION NO. 13(S)**
(CTU2010-0505-01)

(Summary Disposition issued pursuant to
Gov. Code, sec. 11340.5; Cal. Code Regs., tit.
1, sec. 270(f))

Petition challenging as an underground
regulation DOM¹ Supplement #116, titled
“North Program and Activity Schedule for
SNY Inmates”

On April 30, 2010, you submitted a petition to the Of-
fice of Administrative Law (OAL) asking for a deter-
mination as to whether DOM Supplement #116, titled
“North Program and Activity Schedule for SNY In-
mates” issued by the California Correctional Training
Facility constitutes an underground regulation. DOM
Supplement #116 is dated August 2010, and is attached
hereto as Exhibit A.

In issuing a determination, OAL renders an opinion
only as to whether a challenged rule is a “regulation” as
defined in Government Code section 11342.600,²
which should have been, but was not adopted pursuant
to the Administrative Procedure Act (APA).³ Nothing
in this analysis evaluates the advisability or the wisdom

¹ The DOM is the Department Operations Manual published by
the California Department of Corrections and Rehabilitation.

² “Regulation” means every rule, regulation, order, or standard of
general application or the amendment, supplement, or revision of
any rule, regulation, order, or standard adopted by any state
agency to implement, interpret, or make specific the law enforced
or administered by it, or to govern its procedure.

³ Such a rule is called an “underground regulation” as defined in
California Code of Regulations, title 1, section 250, subsection
(a):

“Underground regulation” means any guideline, criterion, bul-
letin, manual, instruction, order, standard of general applica-
tion, or other rule, including a rule governing a state agency
procedure, that is a regulation as defined in section 11342.600
of the Government Code, but has not been adopted as a regula-
tion and filed with the Secretary of State pursuant to the APA
and is not subject to an express statutory exemption from adop-
tion pursuant to the APA.

of the underlying action or enactment. OAL has neither
the legal authority nor the technical expertise to evalu-
ate the underlying policy issues involved in the subject
of this determination.

Generally, a rule which meets the definition of a “reg-
ulation” in Government Code section 11342.600 is re-
quired to be adopted pursuant to the APA. In some
cases, however, the Legislature has chosen to establish
exemptions from the requirements of the APA. Penal
Code section 5058, subdivision (c), establishes exemp-
tions expressly for the California Department of
Corrections and Rehabilitation (CDCR):

(c) The following are deemed not to be
“regulations” as defined in Section 11342.600 of
the Government Code:

(1) Rules issued by the director applying solely to a
particular prison or other correctional
facility. . . .

This exemption is called the “local rule” exemption.
It applies only when a rule is established for a single
correctional institution.

In *In re Garcia* (67 Cal.App.4th 841, 845), the court
discussed the nature of a “local rule” adopted by the
warden for the Richard J. Donovan Correctional Facili-
ty (Donovan) which dealt with correspondence be-
tween inmates at Donovan:

The Donovan inter-institutional correspondence
policy applies solely to correspondence entering
or leaving Donovan. It applies to Donovan
inmates in all instances.

. . . .
The Donovan policy is not a rule of general
application. It applies solely to Donovan and,
under Penal Code section 5058, subdivision
(c)(1), is not subject to APA requirements.

Similarly, the rule challenged by your petition applies
solely to the inmates of the Correctional Training Facili-
ty. Although you did not provide a complete copy of the
document, DOM supplement section #116 was issued
by that institution. Inmates housed at other institutions
are governed by those other institutions’ criteria. The
rule you challenged was issued by the Correctional
Training Facility, and applies only to inmates at that in-
stitution. Therefore, the rule is a “local rule” and is ex-
empt from compliance with the APA pursuant to Penal
Code section 5058(c)(1). It is not an underground regu-
lation.⁴

⁴ The rule challenged by your petition is the proper subject of a
summary disposition letter pursuant to title 1, section 270 of the
California Code of Regulations. Subdivision (f) of section 270
provides:

(Footnote continues on next page)

The issuance of this summary disposition does not restrict your right to adjudicate the alleged violation of section 11340.5 of the Government Code.

/s/
SUSAN LAPSLEY
Director

/s/
Elizabeth A. Heidig
Staff Counsel

Copy: Matthew Cate
John McClure

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Date: June 23, 2010
To: Charles Griffin II
From: Chapter Two Compliance Unit
Subject: **2010 OAL DETERMINATION NO. 11 (S)**
(CTU2010-0506-02)
(Summary Disposition issued pursuant to Gov. Code, sec. 11340.5; Cal. Code Regs., tit. 1, sec. 270(f))

Petition challenging as an underground regulation Operational Procedure (4) 222, titled "Single/Double Cell Criteria"

On May 6, 2010, you submitted a petition to the Office of Administrative Law (OAL) asking for a determination as to whether Operational Procedure (4) 222, titled "Single/Double Cell Criteria" constitutes an underground regulation. The copy you provided is incom-

(Footnote continued from previous page)

- (1) If facts presented in the petition or obtained by OAL during its review pursuant to subsection (b) demonstrate to OAL that the rule challenged by the petition is not an underground regulation, OAL may issue a summary disposition letter stating that conclusion. A summary disposition letter may not be issued to conclude that a challenged rule is an underground regulation.
- (2) Circumstances in which facts demonstrate that the rule challenged by the petition is not an underground regulation include, but are not limited to, the following:
 - (A) The challenged rule has been superseded.
 - (B) The challenged rule is contained in a California statute.
 - (C) The challenged rule is contained in a regulation that has been adopted pursuant to the rulemaking provisions of the APA.
 - (D) The challenged rule has expired by its own terms.
- (E) An express statutory exemption from the rulemaking provisions of the APA is applicable to the challenged rule.**
(Emphasis added.)

plete, however, it is clear that Operational Procedure (4) 222 was issued by Kern Valley State Prison. The date of the Operational Procedure is not included, nor is the signature page. The partial copy of Operational Procedure you provided is attached hereto as Exhibit A.

In issuing a determination, OAL renders an opinion only as to whether a challenged rule is a "regulation" as defined in Government Code section 11342.600,¹ which should have been, but was not adopted pursuant to the Administrative Procedure Act (APA).² Nothing in this analysis evaluates the advisability or the wisdom of the underlying action or enactment. OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

Generally, a rule which meets the definition of a "regulation" in Government Code section 11342.600 is required to be adopted pursuant to the APA. In some cases, however, the Legislature has chosen to establish exemptions from the requirements of the APA. Penal Code section 5058, subdivision (c), establishes exemptions expressly for the California Department of Corrections and Rehabilitation (CDCR):

(c) The following are deemed not to be "regulations" as defined in Section 11342.600 of the Government Code:

(1) Rules issued by the director applying solely to a particular prison or other correctional facility. . . .

This exemption is called the "local rule" exemption. It applies only when a rule is established for a single correctional institution.

In *In re Garcia* (67 Cal.App.4th 841, 845), the court discussed the nature of a "local rule" adopted by the warden for the Richard J. Donovan Correctional Facility (Donovan) which dealt with correspondence between inmates at Donovan:

The Donovan inter-institutional correspondence policy applies solely to correspondence entering or leaving Donovan. It applies to Donovan

¹ "Regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

² Such a rule is called an "underground regulation" as defined in California Code of Regulations, title 1, section 250, subsection (a):

"Underground regulation" means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

inmates in all instances.

The Donovan policy is not a rule of general application. It applies solely to Donovan and, under Penal Code section 5058, subdivision (c)(1), is not subject to APA requirements.

Similarly, the rule challenged by your petition applies solely to the inmates of Kern Valley State Prison. Inmates housed at other institutions are governed by those other institutions' criteria for single and double celling. The rule you challenged was issued by Kern Valley State Prison and applies only to inmates at Kern Valley State Prison. Therefore, the rule is a "local rule" and is exempt from compliance with the APA pursuant to Penal Code section 5058(c)(1). It is not an underground regulation.³

The issuance of this summary disposition does not restrict your right to adjudicate the alleged violation of section 11340.5 of the Government Code.

/s/
SUSAN LAPSLEY
Director

/s/
Kathleen Eddy
Senior Counsel

Copy: Matthew Cate
Tim Lockwood

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Date: June 24, 2010

³ The rule challenged by your petition is the proper subject of a summary disposition letter pursuant to title 1, section 270 of the California Code of Regulations. Subdivision (f) of section 270 provides:

(f)(1) If facts presented in the petition or obtained by OAL during its review pursuant to subsection (b) demonstrate to OAL that the rule challenged by the petition is not an underground regulation, OAL may issue a summary disposition letter stating that conclusion. A summary disposition letter may not be issued to conclude that a challenged rule is an underground regulation.

(2) Circumstances in which facts demonstrate that the rule challenged by the petition is not an underground regulation include, but are not limited to, the following:

(A) The challenged rule has been superseded.

(B) The challenged rule is contained in a California statute.

(C) The challenged rule is contained in a regulation that has been adopted pursuant to the rulemaking provisions of the APA.

(D) The challenged rule has expired by its own terms.

(E) An express statutory exemption from the rulemaking provisions of the APA is applicable to the challenged rule. (Emphasis added.)

To: Robert Daniels

From: Chapter Two Compliance Unit

Subject: **2010 OAL DETERMINATION NO. 14 (S)**
(CTU2010-0506-01)

(Summary Disposition issued pursuant to Gov. Code, sec. 11340.5; Cal. Code Regs., tit. 1, sec. 270(f))

Petition challenging as an underground regulation California Code of Regulations, title 15, section 3084.2

On May 6, 2010, you submitted a petition to the Office of Administrative Law (OAL) asking for a determination as to whether California Code of Regulations, title 15, section 3084.2 constitutes an underground regulation. Specifically, you challenge the limitation in subsection (a)(1) of one continuation page for Sections A and B of CDC Form 602 (rev. 12-87), Inmate/Parolee Appeal Form. California Code of Regulations, title 15, section 3084.2 and CDC Form 602 is attached hereto as Exhibits A and B, respectively.

In issuing a determination, OAL renders an opinion only as to whether a challenged rule is a "regulation" as defined in Government Code section 11342.600,¹ which should have been, but was not adopted pursuant to the Administrative Procedure Act (APA).

If a rule meets the definition of a regulation in Government Code section 11342.600, but was not adopted pursuant to the APA, it may be an "underground regulation" as defined in California Code of Regulations, title 1, section 250:

The following definitions shall apply to the regulations contained in this chapter:

(a) "Underground regulation" means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in Section 11342.600 of the Government Code, *but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA* and is not subject to an express statutory exemption from adoption pursuant to the APA. (Emphasis added.)

The section you challenge as an underground regulation, California Code of Regulations, title 15, section 3084.2 was duly adopted as a regulation pursuant to the APA and filed with the Secretary of State on May 18, 1989. Subsection (a)(1) was amended in 1995, 1996, and most recently in 1997. All amendments were made

¹ "Regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

in compliance with the APA and duly filed with the Secretary of State.²

For the reasons discussed above, we find that the rule challenged by your petition is not an underground regulation.³

The issuance of this summary disposition does not restrict your right to adjudicate the alleged violation of section 11340.5 of the Government Code.

/s/
SUSAN LAPSEY
Director

/s/
Kathleen Eddy
Senior Counsel

Copy: Matthew Cate
Tim Lockwood

**ACCEPTANCE OF PETITION
TO REVIEW ALLEGED
UNDERGROUND REGULATIONS**

OFFICE OF ADMINISTRATIVE LAW

**ACCEPTANCE OF PETITION TO REVIEW
ALLEGED UNDERGROUND REGULATIONS**

² The complete history notes for California Code of Regulations, title 15, section 3084.2 are included with the text of the section in Exhibit A.

³ The rule challenged by your petition is the proper subject of a summary disposition letter pursuant to title 1, section 270 of the California Code of Regulations. Subdivision (f) of section 270 provides:

(f)(1) If facts presented in the petition or obtained by OAL during its review pursuant to subsection (b) demonstrate to OAL that the rule challenged by the petition is not an underground regulation, OAL may issue a summary disposition letter stating that conclusion. A summary disposition letter may not be issued to conclude that a challenged rule is an underground regulation.

(2) Circumstances in which facts demonstrate that the rule challenged by the petition is not an underground regulation include, but are not limited to, the following:

(A) The challenged rule has been superseded.

(B) The challenged rule is contained in a California statute.

(C) *The challenged rule is contained in a regulation that has been adopted pursuant to the rulemaking provisions of the APA.*

(D) The challenged rule has expired by its own terms.

(E) An express statutory exemption from the rulemaking provisions of the APA is applicable to the challenged rule.

(Emphasis added.)

**(Pursuant to title 1, section 270, of the
California Code of Regulations)**

The Office of Administrative Law has accepted the following petition for consideration. Please send your comments to:

Elizabeth Heidig, Staff Counsel
Office of Administrative Law
300 Capitol Mall, Ste. 1250
Sacramento, CA 95814

A copy of your comment must also be sent to the petitioner and the agency contact person.

Petitioner:

Michael Brodheim, C-46663
California Medical Facility — J-156-U
P.O. BOX 2500
Vacaville, CA 95696-2500

Agency contact:

Martin Hoshino, Executive Director
Board of Parole Hearings
P.O. BOX 4036
Sacramento, CA 95812

Please note the following timelines:

Publication of Petition in Notice Register: July 9, 2010

Deadline for Public Comments: August 9, 2010

Deadline for Agency Response: August 23, 2010

Deadline for Petitioner Rebuttal: No later than 15 days after receipt of the agency's response

Deadline for OAL Decision: November 8, 2010

The attachments are not being printed for practical reasons or space considerations. However, if you would like to view the attachments please contact Margaret Molina at (916) 324-6044 or mmolina@oal.ca.gov.

**DEPARTMENT OF CORRECTIONS AND
REHABILITATION**

**PETITION TO THE OFFICE OF
ADMINISTRATIVE LAW**

RE: Alleged Underground Regulation

FROM: Michael Brodheim (Petitioner)

DATE: 4/25/2010

Use of this form is optional. It requests the information required by California Code of Regulations, title 1, section 260, for a petition challenging an alleged underground regulation. Although you are not required to use this specific form, the mandatory information required

by California Code of Regulations, title 1, section 260, including the supporting documentation, must be included in your petition. If you create a separate petition, or if you use this form and need to add extra pages, be sure that each page is labeled clearly.

1. Identifying Information:

Your name: Michael Brodheim, C-46663 (J-156-0)

Your address: California Medical Facility, P. O. Box 2500, Vacaville, CA 95696-2500

Your telephone number (if you have one):

Your email (if you have one):

2. State agency or department being challenged:

California Department of Corrections and Rehabilitation (CDCR), Board of Parole Hearings (BPH)

3. Provide a complete description of the purported underground regulation. Attach a written copy of it. If the purported underground regulation is found in an agency manual, identify the specific provision of the manual alleged to comprise the underground regulation. Please be as precise as possible.

Please see attached.

4. Provide a description of the agency actions you believe demonstrate that it has issued, used, enforced, or attempted to enforce the purported underground regulation.

Please see attached.

5. State the legal basis for believing that the guideline, criterion, bulletin, provision in a manual, instruction, order, standard of general application, or other rule or procedure is a regulation as defined in Section 11342.600 of the Government Code AND that no express statutory exemption to the requirements of the APA is applicable.

Please see attached.

6. Provide information demonstrating that the petition raises an issue of considerable public importance requiring prompt resolution.

Please see attached.

7. (Optional) Please attach any additional relevant information that will assist OAL in evaluating your petition.

8. Certifications:

I certify that I have submitted a copy of this petition and all attachments to the state agency which has issued, used, enforced, or attempted to enforce the purported underground regulation:

Name of person in agency to whom petition was sent:

Timothy M. Lockwood, Chief
Regulations and Policy Management Branch
Agency: Correctional Standards Authority
CDCR

Address: P.O. Box 942883
Sacramento, CA 94283-0001
Telephone number: (916) 255-5500

Martin Hoshino
Executive Officer
Board of Parole Hearings
P. O. Box 4036
Sacramento, CA
95812-4036

I certify that all of the above information is true and correct to the best of my knowledge.

/s/	5/1/10
Signature of Petitioner	Date

Please note that if the state agency whose rule you are challenging is the California Department of Corrections and Rehabilitation (CDCR) or any prison or facility within the CDCR, the correct address to which to send a copy of the petition is:

Regulations and Policy Management Branch
CDCR
P.O. Box 942883
Sacramento, CA 94283-0001

Attachments 3, 4, 5 and 6

3. On or about January 1, 2009, the BPH introduced “a new guideline for the completion of psychological evaluations to ensure all [lifer parole consideration] hearings have a completed report with a standardized format that incorporates the use of risk assessment instruments.” Ex. A. Those risk assessment instruments — the Historical Clinical Risk Management-20 (HCR-20), the Hare Psychopathy Checklist-Revised (PCL-R), the Level of Service/Case Management Inventory (LS/CMI), and (when deemed appropriate by a clinician employed by BPH’s Forensic Assessment Division), the Static 99 (see Ex. B (Attachment to Ex. A), p. 2) — purport to measure “a prisoner’s potential risk for future violence.” Ex. A. The new protocol “will create uniformity in the psychological reporting process including establishing expiration criteria for the reports, and transitioning to a standardized format that provides an assessment before each [lifer parole consideration] hearing.” Ex. B, p. 1.

CDCR has exempted these psychological reports, which may (and generally do) provide fodder for the BPH to conclude that a prisoner poses an unreasonable risk of danger to the public safety (if released on parole), from Cal. Code Regs., tit. 15, section 3084.1, subd. (a), which gives inmates the right to appeal “any departmental decision, action, condition, or policy [without exception] which they can demonstrate as having an adverse effect upon their welfare.” (Emphasis added.) See Ex’s. C, D, and E. Neither the “new guideline” nor the exemption to Cal. Code Regs., tit. 15, section 3084.1, subd. (a), has been adopted as a regulation

pursuant to APA rulemaking requirements. Each is a “rule of general application” for which no APA exemption exists. Therefore, each is an underground regulation.

4. On or about December 1, 2008, BPH Executive Officer Martin Hoshino issued a “Notice to District Attorneys, State Appointed and Private Inmate Counsel” announcing the introduction, beginning January 1, 2009, of its new protocol for psychological evaluations used at lifer parole consideration hearings. Ex’s. A and B. The BPH in fact now utilizes this new protocol at all lifer parole consideration hearings. See e.g. Ex’s. C and D. The new psychological reports disclaim (implicitly) the right of an inmate to challenge (via the inmate appeals process) statements made in the reports with which the inmate may disagree (and which the inmate can demonstrate will likely have an adverse effect upon his or her welfare — because the psychological report will be utilized by a BPH Lifer Panel as a tool to determine the inmate’s potential for future violence, and hence his or her suitability for parole). Ex. C, p. 13; Ex. D, p. 13. CDCR in fact refuses to allow inmates to use the appeals process to challenge statements made in these reports. See e.g. Ex. E.

5. In his Notice (Ex. A), BPH Executive Officer Martin Hoshino explicitly states that the purpose of introducing “a new guideline” for the completion of psychological evaluations is “to ensure all [lifer parole consideration] hearings have a completed report with a standardized format that incorporates the use of risk assessment instruments.” Id. (emphasis added). The Psychological Report Process (Ex. B) states that “the BPH will create uniformity in the psychological reporting process. . . [by] transitioning to a standardized format that provides an assessment before each hearing.” Id., p. 1 (emphasis added). “The BPH will implement the guidelines provided [in the Psychological Report Process] on or about January 1, 2009.” Ibid. Because it is applicable to “all” lifer parole consideration hearings, the new psychological reporting protocol is a “rule of general application.”

The disclaimer that the inmate can express “any concerns or disagreements about the content of [the psychological] report. . . at his [or her] next board appearance” or by attaching a written rebuttal to the current evaluation “for future reference” appears at the end of each new psychological report. See e.g. Ex. C, p. 13; Ex. D, p. 13. The CDCR interprets this disclaimer to mean that any concerns or disagreements about the content of the psychological report are not within its jurisdiction — even though the BPH is part of the CDCR — and hence are exempt from the inmate appeals process codified at Cal. Code Regs., tit. 15, section 3084.1, subd. (a). See Ex. E. This purported jurisdictional exemption is thus also a “rule of general application.”

Petitioner is unaware of any exemption to APA rulemaking requirements that would apply to either the Psychological Report Process or to the purported jurisdictional exemption from Cal. Code Regs., tit. 15, section 3084.1, subd. (a).

6. This petition raises an issue of considerable public importance requiring prompt resolution because the new Psychological Report Process impacts (currently) the lives of some 23,000 parole-eligible life prisoners (and their families) — which population is growing (because the number of such prisoners received by CDCR vastly exceeds the number paroled, in no small part as a result of the use of the new Psychological Report Process) — as well as because the BPH seriously abuses its authority by requiring that risk assessments be made using instruments that have never been validated for use in a population similar to California’s life-term inmate population. Indeed, the BPH openly admits that, as it administers the risk assessment instruments to an unwitting population of lifer/guinea-pigs, it will “simultaneously study the validity and reliability of using [these] psychological assessment instruments for life term inmates.” Ex. B, p. 1. At the present time, there is no statutory or regulatory authority for the use of any psychological reports, let alone for the mandatory use of specific risk assessment instruments. Meanwhile, inmates subject to this new mandatory process can challenge neither the process nor the specific content of any report generated using the new “guidelines.” Ex. B, p. 1; Ex. E.

Not only are the validity and reliability of the BPH’s new risk assessment tools for California’s life-term inmate population currently unknown, worse yet, there is substantial evidence that use of these tools is “inappropriate, inherently inaccurate, and unethical.” Ex. F, p. 3, ¶ 8. Indeed, “the current base recidivism rate for life term inmates in California is in the 1% to 3% range, substantially below the rate for the populations from which the actuarial [risk assessment] tools in use [by the BPH] were developed, and well below the 10% recidivism cut-off point for accuracy in development and application.” Id., p. 3, ¶ 7. Hence, “those tools are inapplicable to California life term inmates, for whom no actuarial tools have been developed.” Ibid. Use of those tools “will produce a high number of false results.” Ibid. See also id., pp. 5–6, ¶ 14 (“Because the research and validation for the LS/CMI was done with short-term offenders with two years or less to serve on their prison sentences, it is inapplicable as an assessment tool for predicting recidivism and future violence among California life term inmates [who have served a minimum of seven years, see Penal Code, § 3046, and typically decades, in custody.]”); Ex. G, p. 2, ¶ 5 (noting that because the PCL–R and HCR–20 have “never been standardized or tested for accuracy on the California life

term inmate population,” their use to predict dangerousness among members of that population is “inaccurate, inappropriate, unreliable, and a violation of testing standards”); and *id.*, p. 7, ¶ 21 (“It is not possible to develop measures that would accurately predict future violence in [the California life-term inmate] population, because California life term inmates do not have a high enough parole failure rate from which to formulate a statistical base rate.”).

Ex’s F and G note additional problems with use of the BPH’s new risk assessment tools. One gleans from those declarations that the heavy emphasis placed by those tools on static factors (see e.g. Ex. F, pp. 2–3, ¶ 5) constitutes an attempt by the BPH to circumvent the California Supreme Court’s admonition against reliance on such factors. In *re Lawrence* (2008) 44 Cal.4th 1181, 1205 (while “the fundamental consideration in parole decisions is public safety,” “the core determination of ‘public safety’ . . . involves an assessment of an inmate’s current dangerousness”) (emphasis in original) and 1221 (the relevant inquiry involves “consideration of the passage of time” as well as “the attendant changes in the inmate’s psychological or mental attitude”). In *Lawrence*, the Supreme Court noted that the passage of time undermined the evidentiary value of “stale psychological assessments.” *Id.* at 1223–24. By relying on risk assessment tools which emphasize static (as opposed to dynamic) factors, the BPH is now effectively able to ignore both the passage of time and the attendant changes in an inmate’s psychological or mental attitude. *Cf. id.*

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653–7715. Please have the agency name and the date filed (see below) when making a request.

File# 2010–0513–01

BOARD OF FORESTRY AND FIRE PROTECTION
Activity Center Clarification for NSO, 2010

In this regulatory action, the Board of Forestry and Fire Protection amends two of its regulations pertaining to the Northern Spotted Owl. The regulations being amended were issued under the Z’berg–Nejedly Forest

Practice Act of 1973, govern timber harvesting plans and other timber-related plans, and are utilized to evaluate the effect of timber operations on Northern Spotted Owls. The amendments are primarily clarifying, including the removal of undefined terms and focusing on the use of the defined term “activity center.”

Title 14

California Code of Regulations

AMEND: 919.9, 939.9

Filed 06/23/2010

Effective 01/01/2011

Agency Contact:

Christopher Zimny

(916) 653–9418

File# 2010–0517–03

CALIFORNIA INSTITUTE FOR REGENERATIVE MEDICINE

MES Amendments to 100070 and 100090

This regulatory action makes some amendments to the Medical and Ethical Standard (MES) regulations to support adult stem cell research using somatic cells and to govern consent for and utilization of embryos for CIRM-funded research.

Title 17

California Code of Regulations

AMEND: 100070, 100090

Filed 06/29/2010

Effective 07/29/2010

Agency Contact:

C. Scott Tocher

(415) 396–9136

File# 2010–0603–05

CALIFORNIA LAW REVISION COMMISSION
Conflict-of-Interest Code

The California Law Revision Commission is amending its conflict of interest code found at title 2, div. 8, ch. 26, secs. 47000–47002, California Code of Regulations. The amendment was approved for filing by the Fair Political Practices Commission on May 19, 2010.

Title 2

California Code of Regulations

AMEND: 47000, 47001, 47002

Filed 06/24/2010

Effective 07/24/2010

Agency Contact:

Debora Larrabee

(916) 739–7084

File# 2010–0628–02

DEPARTMENT OF FOOD AND AGRICULTURE
Oriental Fruit Fly Interior Quarantine

This regulatory action establishes approximately 79 square miles in the North Highlands area of Sacramento County as a quarantine area for the Oriental fruit fly (“*Bactrocera dorsalis*”). The effect of the quarantine

provides authority for the State to regulate movement of hosts of Oriental fruit fly from, into and within this area to prevent the artificial spread of the fly to noninfested areas to protect the public and California's agricultural industry.

Title 3
California Code of Regulations
AMEND: 3423(b)
Filed 06/30/2010
Effective 06/30/2010
Agency Contact:
Stephen S. Brown (916) 654-1017

File# 2010-0614-01
DEPARTMENT OF HEALTH CARE SERVICES
Long Term Care Reimbursement

This emergency regulatory action implements Medi-Cal rate changes authorized by the budget act of 2003/2004 (Statutes of 2003, Chapter 157, Items 4260-101-0001 and 4260-101-0890). The rates are "reimbursement rates established by the Department for specific types of facilities providing long-term care services to Medi-Cal beneficiaries."

Title 22
California Code of Regulations
AMEND: 51510, 51510.1, 51510.2, 51510.3, 51511, 51511.5, 51511.6, 51535, 51535.1, 51544, 54501
Filed 06/24/2010
Effective 06/24/2010
Agency Contact: Ben Carranco (916) 440-7766

File# 2010-0517-04
DEPARTMENT OF INDUSTRIAL RELATIONS
Labor Compliance Programs and Fee-based Compliance Monitoring by DIR

This regulatory action amends regulations governing the approval and operation of Labor Compliance Programs by state and local agencies involved with public works construction contracts and adopts new regulations governing fees and monitoring and enforcement standards for the Labor Commissioner on state bond-funded and other specified public works projects as required by Statutes of 2009, chapter 7 (SBx2-9).

Title 8
California Code of Regulations
ADOPT: 16450, 16451, 16452, 16453, 16454, 16455, 16460, 16461, 16462, 16463, 16464
AMEND: 16421, 16423, 16427, 16428, 16431, 16433, 16500
Filed 06/29/2010
Effective 08/01/2010
Agency Contact:
John Cumming (415) 703-4265

File# 2010-0520-01
DEPARTMENT OF INDUSTRIAL RELATIONS
Reimbursement for SMCS Services

The Department of Industrial Relations implemented this rulemaking action to adopt title 8, California Code of Regulations, section 17300, to establish fees for reimbursement of certain training and facilitation services, representation services, election services, and arbitration panel and referral services provided by the State Mediation and Conciliation Service to employer, employee, and labor organizations pursuant to Labor Code sections 65-67 or to California public transit labor-management related organizations under the Public Utilities Code.

Title 8
California Code of Regulations
ADOPT: 17300
Filed 06/30/2010
Effective 07/01/2010
Agency Contact: Roger Jeanson (415) 703-4240

File# 2010-0526-06
DEPARTMENT OF REAL ESTATE
SB 36 (Chapter 160, Statutes of 2009) — The SAFE Act

This is the Certificate of Compliance for the emergency rulemaking that amended two sections in Title 10 of the California Code of Regulations and adopted 12 new sections in two new articles. This rulemaking is designed to establish the requirements for licensed real estate salespersons and brokers to engage in mortgage loan origination activities including a background check, continuing education and personal character requirements.

Title 10
California Code of Regulations
ADOPT: 2756, 2758.1, 2758.2, 2758.3, 2758.4, 2758.5, 2758.6, 2758.7, 2945.1, 2945.2, 2945.3, 2945.4 AMEND: 2750, 2911
Filed 06/29/2010
Agency Contact:
Daniel E. Kehew (916) 227-0425

File# 2010-0518-01
DIVISION OF WORKERS COMPENSATION
Workers' Compensation

Division of Workers' Compensation submitted this action as one without regulatory effect to update three electronic based "EAMS" forms related to workers' compensation claims filings, forms 10232.1, 10232.2, and 10250.1, and to update the incorporation by reference dates in the corresponding sections to these forms in title 8, California Code of Regulations, sections 10232.1, 10232.2, and 10250.1.

Title 8
California Code of Regulations
AMEND: 10232.1, 10232.2, 10250.1
Filed 06/30/2010
Agency Contact:
James D. Fisher (650) 737-2049

File# 2010-0518-02
FISH AND GAME COMMISSION
Mammal Hunting Regulations
This regulatory action adopts the mammal hunting regulations for 2010-2011.

Title 14
California Code of Regulations
AMEND: 360, 361, 362, 363, 364, 555, 708, 713
Filed 06/24/2010
Effective 06/24/2010
Agency Contact:
Jon Snellstrom (916) 653-4899

File# 2010-0615-01
MANAGED RISK MEDICAL INSURANCE
BOARD
HFP Modify Mental Health Benefits

The Healthy Families Program (HFP) is California's state- and federally-funded Children's Health Insurance Program (CHIP) established pursuant to title XXI of the federal Social Security Act. The Board administers HFP. HFP provides comprehensive health, dental and vision insurance to low-income children under the age of 19 with family income above the Medi-Cal income eligibility levels. Approximately two-thirds of the funding for HFP is provided by the federal CHIP. This emergency regulatory action removes the treatment limitations for mental health and substance abuse treatment services, bringing HFP into compliance with federal mental health parity law, clarifies that the HFP participating health plans provide care for children with serious emotional disturbance (SED) or a California Children's Service (CCS) eligible condition until the needed care is authorized and provided by the County Mental Health Department or CCS, respectively, extends the 2009-2010 HFP benefit year by three months (from July 1 through October 1) and establishes ongoing HFP benefit years to run October to October. Pursuant to Insurance Code section 12693.22, this emergency regulatory action is deemed to meet the emergency standard and is exempt from OAL review.

Title 10
California Code of Regulations
AMEND: 2699.6500, 2699.6700, 2699.6707, 2699.6721
Filed 06/24/2010
Effective 07/01/2010
Agency Contact: Dianne Knox (916) 324-0592

File# 2010-0603-04
MEDICAL BOARD OF CALIFORNIA
Notice to Consumers

This is a file submitted pursuant to Title 1 section 100 of the California Code of Regulations, by the Medical Board of California (Board) related to the approval of section 1355.4 of Title 16 (OAL file 2010-0217-01S). First, the Board changes their listed phone number. Second, the Board changes the section heading from "Notice to Patients" to "Notice to Consumers" based upon Business and Professions Code section 138.

Title 16
California Code of Regulations
AMEND: 1355.4
Filed 06/30/2010
Agency Contact:
Kevin A. Schunke (916) 263-2368

File# 2010-0617-06
STATE ALLOCATION BOARD
Leroy F. Greene School Facilities Act of 1998; Priorities in Funding

This emergency rulemaking action establishes a one-time apportionment priority to school districts with unfunded-but-approved bond-funded public school modernization and new construction projects so long as the school districts apply, beginning May 27, 2010 and ending June 28, 2010, for priority treatment and agree to submit a Fund Release Authorization on Form SAB 50-05 within 90 days of conversion from Unfunded Approval to Apportionment.

Title 2
California Code of Regulations
ADOPT: 1859.90.1 AMEND: 1859.90.1 renumbered as 1859.90.2, 1859.129, 1859.197
Filed 06/24/2010
Effective 06/24/2010
Agency Contact: Lisa Jones (916) 376-1753

File# 2010-0511-01
STATE ALLOCATION BOARD
Leroy F. Greene School Facilities Act of 1998; ORG Amendments

This rulemaking amends Title 2 section 1859.184 to add an additional application submittal date of July 30, 2010 for a future funding cycle for the Overcrowding Relief Grant (ORG) program. This program enables school districts to reduce the number of portable classrooms on eligible overcrowded school sites by replacing them with permanent classrooms.

Title 2
California Code of Regulations
AMEND: 1859.184
Filed 06/23/2010
Effective 06/23/2010
Agency Contact: Robert Young (916) 375-5939

**CCR CHANGES FILED
WITH THE SECRETARY OF STATE
WITHIN January 27, 2010 TO
June 30, 2010**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulations titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 2

06/24/10 ADOPT: 1859.90.1 AMEND: 1859.90.1
renumbered as 1859.90.2, 1859.129,
1859.197
06/24/10 AMEND: 47000, 47001, 47002
06/23/10 AMEND: 1859.184
06/17/10 AMEND: 18703.3
06/17/10 ADOPT: 18313.5
06/09/10 AMEND: Div. 8, Ch. 64, Sec. 55300
05/25/10 AMEND: div. 8, ch. 65, sec. 55400
05/11/10 AMEND: 18945
05/06/10 AMEND: 1859.2
05/03/10 AMEND: 60040, 60045
04/21/10 AMEND: 1859.96, 1859.148.2,
1859.166.2
04/08/10 AMEND: 1859.76
03/23/10 AMEND: 18351
03/19/10 ADOPT: 59670
03/19/10 AMEND: 18942 REPEAL: 18630
03/11/10 AMEND: 18932.4
02/24/10 AMEND: 1859.2, 1859.41, Form SAB
50-01, Form SAB 50-02
02/23/10 AMEND: div. 8, ch. 16, sec. 37000
02/19/10 AMEND: 52400
02/11/10 ADOPT: 18421.9 AMEND: 18431
02/11/10 AMEND: 18950.3
02/09/10 ADOPT: 59660

Title 3

06/30/10 AMEND: 3423(b)
06/18/10 AMEND: 6448, 6448.1, 6449, 6449.1,
6450, 6450.1, 6450.2, 6451, 6451.1
06/10/10 ADOPT: 429, 430 AMEND: 441

06/10/10 ADOPT: 3024.5, 3024.6, 3024.7, and
3024.8 AMEND: 3024, 3024.1, 3024.2,
3024.3, 3024.4, and 4603
06/09/10 AMEND: 3434(b), (c), (d), and (e)
06/07/10 AMEND: 4500
06/02/10 AMEND: 3435
06/01/10 AMEND: 3437(b)
05/24/10 AMEND: 3434(b)
05/17/10 AMEND: 3591.5(a)
05/17/10 ADOPT: 3701, 3701.1, 3701.2, 3701.3,
3701.4, 3701.5, 3701.6, 3701.7, 3701.8
AMEND: 3407(e), 3407(f)
REPEAL: 3000, 3001, 3002, 3003, 3004
05/13/10 AMEND: 3437
05/04/10 AMEND: 3423(b)
05/04/10 AMEND: 3437(b)
05/04/10 AMEND: 3434(b)
05/03/10 AMEND: 3434(b), 3434(c) and 3434(d)
04/22/10 AMEND: 3434(b)
04/22/10 AMEND: 3406(b), 3406(c)
04/20/10 AMEND: 3437(b)
04/15/10 AMEND: 3434(b)
04/05/10 AMEND: 3434(b)
03/24/10 ADOPT: 3436
03/24/10 AMEND: 3588
03/17/10 AMEND: 3423(b)
03/15/10 AMEND: 3434(b)
03/10/10 AMEND: 3591.20(a)
03/10/10 AMEND: 3434(b)
03/04/10 AMEND: 3700(c)
03/04/10 AMEND: 3406(b)
03/03/10 REPEAL: 3279, 3433
03/03/10 AMEND: 3591.20
03/03/10 AMEND: 3406(b)
03/03/10 AMEND: 3423(b)
03/03/10 ADOPT: 3437
02/26/10 AMEND: 3435
02/18/10 AMEND: 3591.23
02/18/10 ADOPT: 3591.24

Title 4

06/21/10 AMEND: 8070, 8072, 8073, 8074
06/09/10 AMEND: 1689.1
06/01/10 AMEND: 10020
05/17/10 ADOPT: 12590 REPEAL: 12590
04/29/10 AMEND: 8034, 8035, 8042, 8043
04/13/10 ADOPT: 12350, 12351, 12352, 12353,
12354, 12355 AMEND: 12008, 12335,
12340, 12342, 12343 renumbered as and
merged with amended 12342, 12344
renumbered as and merged with amended
12345, and 12348 renumbered as 12346
REPEAL: 12347
04/06/10 ADOPT: 12372, 12395, 12396 AMEND:
12370

03/29/10 AMEND: 1685
 03/29/10 AMEND: 1632
 03/25/10 AMEND: 10175, 10176, 10177, 10178,
 10179, 10180, 10181, 10182, 10185,
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